102

Supreme Court, U.S.
FILED

08-288 JUN 28 2008

OFFICE OF THE CLERK
William K. Suter, Clerk

No. _____

In The
SUPREME COURT OF THE UNITED STATES

LOUTO J. BRAQUET, JR.,
Defendant – Appellant – Petitioner,

v.

UNITED STATES OF AMERICA,
Plaintiff – Appellee – Respondent.

(from United States of America v. Braquet, et al.)

ON RULE 11 PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

LOUTO J. BRAQUET, JR.
C/O 11630 SAGECANYON DRIVE
HOUSTON, TX 77089

Questions Presented

Final Preventative Opportunity

1. Is this case suitable for Rule 11 review?

No personal jurisdiction

2. Did USOA ever give proper Notice?

    a. Is the irs an "interested party"?
    b. Was proper Notice served within 120 days?
    c. Have all indispensable parties been served?
    d. Did SMELTZER ever prove his agency?

No subject matter jurisdiction

3. Where's any evidence of any "injury in fact"?

4. Doesn't a complaint for this type case have to be sworn?

Manifest violations of Due Process

5. Where was Braquet given a meaningful opportunity to be heard?

6. Do irrebuttable presumptions still violate Due Process?

7. Does denial of discovery still constitute denial of access?

Capacity

8. How is the "14th Amendment" satisfied, here?

No Evidence

9. Where's proof that this suit was even authorized?

10. Where's any evidence supporting any part of the judgment?

11. Where's the verified assessment?

Void Judgment

12. Isn't this void judgment properly vacated?

13. Isn't this case properly dismissed?

Parties

Stated Plaintiff (Appellee, Respondent)

UNITED STATES OF AMERICA

Hence, the Solicitor General's Office

The two parties Defendant

LOUTO J. BRAQUET, JR. (Appellant, Petitioner)

COUNTRYWIDE HOME LOANS OF TEXAS, INC.
(silent to this very day)

Table of Contents

Questions Presented i

Parties iii

Table of Cited Authorities viii

Petition for a Writ of Certiorari 1

Citations to decisions below 1

Jurisdiction 1

Non-Argument Calendar Preferred 1

Statement of the Case 1

Trial Court Jurisdiction 1
- USOA's unverified allegations 1
- Braquet's verified response(s) 1
- USOA's unverified reply. 2

Conflict within *and* among the circuits 2
- D.C. Circuit 2
- Ninth Circuit. 2
- The St. Louis court. 2
- The New Orleans group. 2

Mitigating damages—window is closing 3

Trial court previously authorized sale of home 4

No personal jurisdiction 4
- Summons was delivered by a party 4
- No service within 120 days. 5
- No service on equitable interest owners. 5

No subject matter jurisdiction 5
No signature authority for USOA. 5
No real party in interest ever showed up..... 5
A new *eo nomine* party? 6
No injury in fact. 6
How is Braquet liable, here, at all?..... 6
How is Braquet liable to USOA?..... 6
No verified complaint..... 6

Manifest violations of Due Process 7
No Notice or opportunity to be heard!..... 7
Irrebuttable presumptions still violate Due Process! 7

No Evidence 8
Before § 7402 is § 7401. 8
Before judgment there is evidence. 8
And, before judgment in a § 7201 (*payment*) case, there is a verified assessment! 8

Capacity 9

Void Judgments 9
Void judgments, generally. 9
Dismissal. 9

Argument 10

Prevention v. Cure..... 10

1. Is this case suitable for Rule 11 review?..... 10
A stitch in time..... 10

No personal jurisdiction 10

2. Did USOA ever give proper Notice? 10

a. Is the irs an "interested party"? 11
Rule 4(c)(2) 11
Systemic confusion. 11
Estoppel via actions. 11

b. Was proper Notice served within 120 days? . 12
Rule 4(m). 12

c. Have all indispensable parties been served? 12
Notice to all interested parties. 12

d. Did SMELTZER ever prove his agency? 13
The relevant agency theories. 13
Actual authority and apparent authority. 13
SMELTZER has no actual authority. 14
SMELTZER has no apparent authority... 14
SMELTZER has no Rule 11 signature authority 14
There is no Original Complaint. 15

No subject matter jurisdiction 15

3. Where's any evidence of any "injury in fact"? 15
On the claim, generally. 15
Where's evidence of signature authority? 15
Where's the real party in interest? 16
Where's even the *eo nomine* party? 16

4. Doesn't a complaint for this type case have to be sworn? 16

Manifest violations of Due Process 16

5. Where was Braquet given a meaningful opportunity to be heard? 16
"Sentence first—then verdict! [*then* trial!]" .. 16

6. Do irrebuttable presumptions still violate Due Process? 17
No opportunity to be heard. 17
USOA never had to satisfy its burden. 17
Not at the threshold. 17
Not for summary judgment. 18
And not for trial. 18
Braquet's defenses presumed away. 18

7. Does denial of discovery still constitute denial of access? 18

Capacity 18

8. How is the "14th Amendment" satisfied, here? 18

No Evidence 19

9. Where's proof that this suit was even authorized? 19

10. Where's any evidence supporting any part of the judgment? 19

11. Where's the verified assessment? 20
DOJ invades *England*! 20

Void Judgments 21

12. Isn't this void judgment properly vacated? ... 21
Void judgments 21

13. Isn't this case properly dismissed? 21
Dismissal is certainly fitting and appropriate. 21

Remedies and Relief Requested 22

Appendix A, Table of Contents ..... A-i

Table of Cited Authorities

Cases

Alamo Cmty. Coll. Dist. v. Browning Constr. Co., 113 S.W.3d 146 (Tex. App. – San Antonio 2004, pet. dism'd). 13

Alexander v. Cosden Pipe Line Co., 290 U.S. 484 (1934) 19

American Insurance Co. v. 356 Bales of Cotton, 26 U.S. (1 Pet.) 511 (1828) (a/k/a *American Insurance Co. v. Canter*) (*356 Bales of Cotton*). 1

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). 18

Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006) 21

Armstrong v. Manzo, 380 U.S. 545 (1965). 11, 17

Arnold v. United States, 544 U.S. 1058 (May 31, 2005) 15, 16

Bank of the United States v. Smith, 24 U.S. (11 Wheat.) 171 (1826). 19

Barr v. City of Columbia, 378 U.S. 146 (1964). 20

Beard v. Banks, 542 U.S. 406 (2004)..... 18

Bernsen v. Live Oak Ins. Agency, 52 S.W.3d 306 (Tex. App. – Corpus Christi 2001, no pet.). 13

BML Stage Lighting, Inc., v. Mayflower Transit, Inc., 14 S.W.3d 395 (Tex. App. – Houston [14th Dist.] 2000, pet. denied). 13

Boddie v. Connecticut, 401 U.S. 371 (1971)..... 11, 17

Bozza v. United States, 330 U.S. 160 (1947)..... 19

Brant v. Virginia Coal & Iron Co., 93 U.S. 326 (1876). 11

Bray v. United States, 423 U.S. 73 (1975). 3

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). 2

Burks v. United States, 437 U.S. 1 (1978)..... 20

California v. Arizona, 440 U.S. 59 (1979)..... 12

Cameron County Sav. Ass'n v. Stewart Title Guaranty Co., 819 S.W.2d 600 (Tex. App. – Corpus Christi 1991, writ denied). 14

Chase v. Wetzlar, 225 U.S. 79 (1912). 21

Clark v. Arizona, 548 U.S. 735 (2006)..... 17

Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (*LaFleur*)..... 17

Coleman v. Klockner & Co. AG, 180 S.W.3d 577 (Tex. App. – Houston [14th Dist.] 2005, n.w.h.). 13, 14

Colorado River Water Cons. Dist. v. United States, 424 U.S. 800 (1976)..... 2, 12

Cool v. United States, 409 U.S. 100 (1972)..... 17

Disney Enters., Inc. v. Esprit Fin., Inc., 981 S.W.2d 25 (Tex. App. – San Antonio 1998, pet dism'd w.o.j.)..... 13

Dixon v. United States, 548 U.S. 1 (2006)..... 18

Dretke v. Haley, 541 U.S. 386 (2004) (*Haley*)..... 20

Dubai Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000)..... 21

Eberhart v. United States, 546 U.S. 12 (2005)..... 21

Elkins v. Moreno, 435 U.S. 647 (1978)..... 17

Fuentes v. Shevin, 407 U.S. 67 (1972)..... 11, 17

Garner v. Louisiana, 368 U.S. 157 (1961)..... 19

Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911)..... 3

Gray v. Black, 267 S.W. 291 (Tex. Civ. App. 1924).. 13

H. J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989)..... 4, 10

Hamdi v. Rumsfeld, 542 U.S. 507 (2004)..... 11, 17

Hammond Packing Co. v. State of Arkansas, 212 U.S. 322 (1909)..... 18

Harris v. Hardeman, 55 U.S. (14 How.) 334 (1852). 10, 17, 21

Heiner v. Donnan, 285 U.S. 312 (1932)..... 18

Helling v. McKinney, 509 U.S. 25 (1993). 4, 10

In re Winship, 397 U.S. 358 (1970). 17, 18

Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982). 18

International Shoe Co. v. Washington, 326 U.S. 310 (1945) (opinion by Black, J.)..... 11, 17

Johnson v. Florida, 391 U.S. 596 (1968)..... 20

Jones Nat'l Bank v. Yates, 240 U.S. 541 (1916)..... 19

Jones v. Flowers, 547 U.S. 220 (2006)..... 11, 17

Juidice v. Vail, 430 U.S. 327 (1977)..... 4, 10

Klapprot v. United States, 335 U.S. 601 (1949)..... 21

Labor Board v. Pittsburgh Steamship Co., 337 U.S. 656 (1949) (*Pittsburgh Steamship Co.*)..... 19

Lloyd v. Alexander, 5 U.S. (1 Cranch) 365 (1803). .. 11

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).15

Martin v. Ohio, 480 U.S. 228 (1987). 17

Martin v. Wilks, 490 U.S. 755 (1989)..... 12

McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178 (1936). 21

Milliken v. Meyer, 311 U.S. 457 (1941). 10, 17

Mullane v. Cent. Hanover Trust Co., 339 U.S. 306 (1950). 11

Mullaney v. Wilbur, 421 U.S. 684 (1975)..... 17, 18

N. Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975). 11, 17

National Hockey League v. Met. Hockey Club, 427 U.S. 639 (1976) (per curiam)..... 18

Nevada v. Untied States, 463 U.S. 110 (1983)..... 12

O'Connor v. Board of Educ. of School Dist. 23, 449 U.S. 1301 (1980)..... 19

Oriel v. Russell, 278 U.S. 358 (1929)..... 3

Pacific Live Stock Co. v. Lewis, 241 U.S. 440 (1916). 12

Pegram v. Herdrich, 530 U.S. 211 (2000)..... 21

Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80 (1988). 10, 17

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895) (*Pollock I*)..... 6, 15, 16

Provident Bank v. Patterson, 390 U.S. 102 (1968)... 12

Pulliam v. Allen, 466 U.S. 522 (1984)..... 4, 10

Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915) (*Cotton Mills*)..... 21

Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980). 18

Romero v. International Terminal Operating Co., 358 U.S. 354 (1959). 1

S. County Mut. Ins. Co. v. First Bank & Trust, 750 S.W.2d 170 (Tex. 1988)..... 13

Sandstrom v. Montana, 442 U.S. 510 (1979)..... 17

Schall v. Martin, 467 U.S. 253, 298-300 (1984) (Dissent)..... 4, 10

Schlesinger v. Councilman, 420 U.S. 738 (1975)..... 21

Schultz v. Rural/Metro Corp., 956 S.W.2d 757 (Tex. App. – Houston [14th Dist.] 1997, no writ)..... 13

Scott v. Harris, __ U.S. __, 127 S. Ct. 1769 (2007)... 18

Secretary of State of Md. v. J. H. Munson Co., 467 U.S. 947 (1984) (*J.H. Munson Co.*). 21

Sinclair v. United States, 279 U.S. 749 (1929). 19

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). 11, 17

Societe Internationale v. Rogers, 357 U.S. 197 (1958). 18

Stanley v. Illinois, 405 U.S. 645 (1972)..... 17

Teamsters v. Terry, 494 U.S. 558, 584 (1990) (Kennedy, J. dissent)..... 12

The Sarah, 21 U.S. (8 Wheat.) 391 (1823). 1

Thompson v. Louisville, 362 U.S. 199 (1960)..... 19

Tidal Oil Co. v. Flanagan, 263 U.S. 444 (1924). 21

United States v. Diebold, 369 U.S. 654 (1962) (*Diebold*)..... 18

United States v. England, 347 F.2d 425 (7th Cir. 1965) (false return) (*England*). 16, 20

United States v. Fior D'Italia, Inc., 536 U.S. 238, 252 (2002) (Souter, J. dissent). 18

United States v. Mitchell, 463 U.S. 206 (1983) (*Mitchell II*)..... 6, 15, 16

United States v. Roselius, 56 U.S. (15 How.) 36 (1853) (*Roselius*)..... 19

United States v. Swift & Co., 318 U.S. 442 (1943) (*Swift & Co.*). 19

United States v. United Mine Workers of America, 330 U.S. 258 (1947) (*United Mine Workers*). 3

Vachon v. New Hampshire, 414 U.S. 478 (1974)..... 20

Vlandis v. Kline, 412 U.S. 441 (1973). 17

Weinberger v. Salfi, 422 U.S. 749 (1975) (*Salfi*). 17

Zuniga v. Navarro & Assocs., P.C., 153 S.W.3d 663 (Tex. App. – Corpus Christi 2005, pet. denied). . 13

Statutes

18 U.S.C. § 7 (2000)..... 2

18 U.S.C. §§ 401, 402 (2000)..... 3

28 U.S.C. § 1331 (2000) (§ 1331). 1

28 U.S.C. § 1340 (2000) (§ 1340). 1

28 U.S.C. § 1345 (2000) (§ 1345). 1

28 U.S.C. § 1746 (2000) (§ 1746). 2

28 U.S.C. § 3002(15)(A) (2000). 2, 15, 16

31 U.S.C. § 321(d) (2000). 15, 16

irc § 7201 (*payment*)..... 2, 8, 16, 20

irc § 7401 (§ 7401). 2, 8, 14, 19, 20

irc § 7402 (§ 7402). 1, 8

TEX. PROP. CODE ANN. § 112.004 (Thompson/West 2007)..... 6, 15, 16, 18

Rules of Civil Procedure

FED. R. CIV. P. 4(c)(2)..... 11, 12

FED. R. CIV. P. 4(m). 5, 9, 12

FED. R. CIV. P. 9(a)..... 6, 15, 16

FED. R. CIV. P. 9(h). 6

FED. R. CIV. P. 11. ..... 5, 14, 15

FED. R. CIV. P. 17 5
FED. R. CIV. P. 17(a). 6, 16
FED. R. CIV. P. 17(b). 15, 16
FED. R. CIV. P. 19(a). 12
FED. R. CIV. P. 19(b). 12
SUPP. R. B..... 6, 16
SUPP. R. C..... 6, 16

Bogert on Trusts

GEORGE GLEASON BOGERT & GEORGE TAYLOR BOGERT, THE LAW OF TRUSTS AND TRUSTEES § __ (rev. 2d. ed. 1995) ("BOGERT § __")
BOGERT § 50 (rev. 2d ed. 1984 & Supp. 2004)..... ..... 6, 15, 16
BOGERT § 871 (repl. vol. for rev. 2d ed. 1995 & Supp. 2004)..... 6, 15, 16

Scott on Trusts

AUSTIN WAKEMAN SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112 (1960)..... 6, 15, 16

Treatises

RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959). 6, 15, 16

Petition for a Writ of Certiorari

Braquet petitions under Rule 11 for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

No decision below, yet, for No. 08-20471 (appeal of Rule 60(b) motion).

Jurisdiction

(i) Date Order Was Entered
None, yet.

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 2101(e). S. Ct. R. 11.

(v) Regarding statutory challenge
N/A

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

USOA's unverified allegations.
28 U.S.C. §§ 1331, 1340, 1345; 26 U.S.C. § 7402.

Braquet's verified response(s).
To this effect:
The Sarah; *356 Bales of Cotton*; *Romero*.

Burger King, 471 U.S. at 486.

Colorado River; 28 U.S.C. § 1746, § 3002(15)(A).

And, there is no evidence satisfying § 7401.

USOA's unverified reply.

18 U.S.C. § 7 (2000) (via 26 U.S.C. § 7201 (*payment*)).

Conflict within *and* among the circuits

D.C. Circuit.

Cf. O'Connor v. comm'r, No. 07-1456 (D.C. Cir.) (*transferred* to 9th Cir.), now No. 08-71474 (9th Cir.) (*Scheduling Order* entered), *with* Stearman v. comm'r, No. 08-1034 (D.C. Cir.) (*dismissed*).

Ninth Circuit.

Cf. O'Connor v. comm'r, No. 08-71474 (9th Cir.) (Scheduling Order entered) (DOJ has filed no Brief), *with* O'Connor v. comm'r, No. 05-70536 (sanctions), *and* O'Connor v. comm'r, No. 06-70954 (dismissed).

The St. Louis court.

United States v. Tharp, No. 5:03-CV-5283 (W.D. Ark.), No. 04-3772 (sanctions).

The New Orleans group.

Tello v. comm'r, Nos. 04-60955, 04-61146 (published, sanctions);

Stearman v. comm'r, No. 05-60521 (published, sanctions);

Florance v. comm'r, No. 05-60552 (sanctions);

Wallis v. comm'r, No. 06-60256 (sanctions);

Taylor and Taylor v. comm'r, No. 07-60665 (hidden sanctions via denial of Refund).

But see In re Braquet, No. 08-20023 (no sanctions); USOA v. Braquet, No. 08-20082 (dismissed for "no fee", but kept the fee, anyway!).

Mitigating damages—window is closing

The trial court has formally announced, as of 4 August, that Braquet must vacate his home by 5 September or else be held in contempt. [1]

The New Orleans group's published policy pretends to allow them to ignore the entirety of the case where the demand is made that Plaintiff actually prove up its threshold burden. *Cf.* No. 05-60521 (Stearman), No. 07-60665 (Taylor), No. 08-20023 (Braquet). To see what all can see, there's no way they're going to deviate from their pattern, and the earliest that a ruling could exist to prevent them from pursuing their present course is early October, which is a month late.

---

[1] The inherent authority to maintain status quo is not the basis for the exercise of jurisdiction. *Cf. United Mine Workers*. To the exact contrary, the trial court is greatly upsetting the status quo. Therefore, the court must have jurisdiction, e.g., the plaintiff must (1) have standing, (2) have § 7401 authorization, (3) serve Notice to all parties, and properly/timely, etc., and the order at issue must be lawful, e.g., (A) subject matter jurisdiction, (B) personal jurisdiction, (C) evidence, (D) Due Process. *See Bray*; 18 U.S.C. §§ 401, 402 (criminal contempt standard). *See also Harris*, 55 U.S. at 339 (void judgments). Even *civil* contempt must be based on a lawful order. *Cf. Oriel*; *Gompers*. But if removal from the property were all that were at issue, then *civil* contempt is ended once a person still at the property is removed from it. Thus, this suggests criminal contempt, which requires a lawful order, of which there isn't one of Record. Braquet has no intention of treating as valid that which is so clearly and facially void, and Braquet fully expects that any removal, no matter how polite and diplomatic, will be accomplished by someone wearing a sidearm, which makes the offence an aggravated kidnapping. *Cf. Mitchell II*, 463 U.S. at 225 (larceny and constructive trust). The property is very clearly POSTED for NO TRESPASSING, and Braquet has given formal, written Notice per TEX. PENAL CODE § 30.05.

The imperative public importance that justifies deviation from the normal course is the preventative measure of mitigation of damages, *Helling* (problem *prevention*), *H. J. Inc.* (same), *Schall*, 467 U.S. at 298-300 (same), *Pulliam* (same), and *Juidice* (bad faith and harassment *both* justify *prevention*), which mitigation is possible now but won't be possible once Braquet's home is confiscated. Also, once he's evicted, the value of the property is in someone else's hands, and *any* devaluation damages Braquet. The matter is very time-sensitive, and a final ruling on this petition isn't quite the same priority as a ruling on the motion for stay. Where the motion for stay may require a petition, this intends to be the petition.

Trial court previously authorized sale of home

Without allowing Braquet any meaningful opportunity to object to DOJ's proposed order, the trial court authorized, as of 14 April, the sale of Braquet's home as early as 3 June.

In addition to the obvious objections, another objection is to the viability of Countrywide's interest in the matter. Unless they can prove up the original note, they have no basis for any proceeds.

No personal jurisdiction

Summons was delivered by a party.

DOJ filed the suit on 11 September 2007. DOJ had an irs agent deliver those papers to Braquet. Among Braquet's prompt objections is his objection to the insufficiency of service. After the court entered its void judgment, DOJ then requested that the trial court allow the irs to sell Braquet's home. [2] By DOJ's

[2] Also note item 2 in the 14 April order allowing the sale.

own hand, the irs is made to appear to be a real party in interest, meaning it never qualified to serve anything relevant to this case on anyone at any time.

No service within 120 days.

The trial court originally set 9 January 2008 as the date of sale. That happens also to be the last day for service. *See* Rule 4(m) (120 days). That date came and went without any competent service of anything.

No service on equitable interest owners.

Land ownership in this state isn't as clear as some would have us think. Just ask the Kelo family! Braquet may or may not have standing to raise this objection, but he fully expects he's duty bound to raise it. It's manifestly obvious that DOJ made absolutely no effort to serve any of the equitable interest holders in the property of focus. Where those equitable interest holders are known via "Big Brother's" public records, doesn't USOA have to serve them, too, given that the case sounds in equity?

No subject matter jurisdiction

No signature authority for USOA.

For there to be subject matter jurisdiction, there first must be a complaint. So, where is it? Where is any evidence establishing DOJ's signature authority for USOA? Where there is no authorized signature, there is no document. Rule 11.

No real party in interest ever showed up.

Where is there any evidence that USOA is a real party in interest? Rule 17. Where is any evidence as to what/who is/are a/the real party(ies) in interest? There certainly is none in the complaint, or anywhere else in the Record, for that matter.

A new *eo nomine* party?

Rule 17(a) seems superabundantly clear. So, why is *this* suit not even filed by the *eo nomine* party?

No injury in fact.

The complaint suffers fatally from a spectacular absence of even stating a case.

HOW IS BRAQUET LIABLE, HERE, AT ALL?

(Notices of) Liens are commercial instruments. So, where's the commercial nexus? USOA fails even to allege how Braquet is liable as a fiduciary. Rules 9(a), 17(a); BOGERT § 50 at 102, § 871 at 156 and nn.2, 3; RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS).

HOW IS BRAQUET LIABLE TO USOA?

USOA fails even to allege how it is a beneficiary. *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion). *See also* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

If USOA is standing in for a named beneficiary, where's the unanimous consent agreement, and/or where's the subrogation agreement?

No verified complaint.

Rule 9(h). *Cf.* Rules B and C.

Rule B isn't as direct as Rule C. Thus, are *agency* in personam complaints verified but *judicial* in personam complaints not? That's conceivable, but it seems a bit inconsistent. Or, is this not actually a forfeiture type proceeding? But, how can that be, in light of DOJ's bold infusion into this case of ***criminal*** "charges" against Braquet?

Manifest violations of Due Process

No Notice or opportunity to be heard!

This case went from unverified, unauthorized, unsigned complaint, by a party with no standing and no claim, to final judgment. Just like that. As already detailed, there was no Notice. To complete the travesty, there was no hearing of any type, kind, or nature. There was no summary judgment process, and there was definitely no trial.

This was a default judgment without any default. Why, if there is to be no judicially supervised debate, is a complaint even filed?

Directly after the "settlement conference", 3 December, which produced no settlement, the court had already entered the "final judgment". Then, DOJ submitted a proposed final order electronically, which it mailed to Braquet. The trial court signed the "final judgment" on 5 December, which didn't even allow Braquet a chance to *receive* DOJ's proposed order, much less to file his objections to it.

Irrebuttable presumptions still violate Due Process!

USOA not only never had to *prove up* a claim, but also it never even had to *allege* a claim! USOA's burden was absolutely and completely relieved.

Presume that, somehow, an unverified, unauthorized, unsigned complaint that fails utterly even to allege a claim suffices these days to trigger a federal court's subject matter jurisdiction to enter a final judgment. How does a defendant even ***begin*** to satisfy his burden of proof for affirmative defenses, e.g., Statute of Frauds, The Patriot Act, without a trial, without summary judgment, and without even a hearing? Thus, from this angle as well, USOA's

burden was relieved, via irrebuttable presumption.

There is no writing signed by Braquet that satisfies the Statute of Frauds for any element of USOA's purported claim. If such a writing exists, USOA never offered it into evidence.

No Evidence

Before § 7402 is § 7401.

DOJ alleges that the suit is authorized. Braquet says, "Prove it!"

Before judgment there is evidence.

DOJ says that USOA *has* a claim. Braquet says, "Prove it!" The plaintiff is right in his cause, till the defendant comes on to examine. There is no evidence of any written agreement that establishes any fiduciary duty to any beneficiary regarding any trust *res*. The response, a criminal charge of "evasion of payment", to the demands for evidence of the threshold burden more than clearly establishes disclaimer. And, there is no evidence that such non-existent agreement is lawful in light of public policy, especially the policy established by The Patriot Act, especially in light of everything generally known and admissible via Judicial Notice. So, why ***are*** there impeachment proceedings? What could possibly have motivated Bugliosi to write his latest book, an NYT "best-seller" without even ***one*** radio or TV promo?!

And, before judgment in a § 7201 (*payment*) case, there is a verified assessment!

Braquet originally filed nine documents, including six motions to dismiss. In its consolidated response, DOJ charged Braquet with "evading" "payment". Thus, DOJ instantly transformed a § 7401 commercial collections matter into a § 7201 quasi-

criminal collections matter. By so boldly charging "evasion" of "payment", DOJ instantly triggered the need to prove up, in addition to everything else, a verified assessment. That doesn't exist, either!

Capacity

Braquet is fully satisfied that both active parties have adequately waived their objections to the debts of the United States. Countrywide, which has not participated to this day, has done so by its silence. However, the trial court's orders don't adequately reflect that fact.

Void Judgments

Void judgments, generally.

If the irs *is* a party, or is estopped from denying that role, then there is no personal jurisdiction, for there is no Notice, and the time period has expired.

Moreover, there is no subject matter jurisdiction, for there is no standing, no complaint, no plaintiff, no claim, and no real party in interest, in addition to the manifest violations of Due Process.

Further, the Record includes no evidence supporting the judgment.

Dismissal.

In most cases, the real parties in interest would be allowed to replead. A new trial would permit DOJ to cure some of the currently fatal problems. Dismissal would follow from a refusal to do so.

However, some of these fatal problems cannot be cured, including the lack of signature authority, Rule 4(m) (120 days), the various capacity issues, and the affirmative defenses. Moreover, plaintiff has had ample Notice of the need to replead, the need to

substitute in the real parties in interest, and the need to produce certain critical evidence, and has very clearly refused. In fact, instead of repleading and providing evidence, DOJ retaliated, "charging" Braquet ***criminally***. And, in the face of all the obvious problems, they ***still*** want to evict him and take his home. So, dismissal is hardly too harsh.

Argument

Prevention v. Cure

1. Is this case suitable for Rule 11 review?

A stitch in time.

Helling (problem *prevention*); *H. J. Inc.* (same); *Schall,* 467 U.S. at 298-300 (same); *Pulliam* (same); and *Juidice* (bad faith and harassment *both* justify *prevention*).

No personal jurisdiction

2. Did USOA ever give proper Notice?

> [I]t has been settled, that a judgment depending upon proceedings in personam can have no force as to one on whom there has been no service of process, actual or constructive; who has had no day in court, and no notice of any proceeding against him. That with respect to such a person, such a judgment is absolutely void ....

Harris, 55 U.S. at 339. *See also Milliken* (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense"

issue is irrelevant to question of Notice). *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Hamdi*; *International Shoe*; *Mullane*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

a. Is the irs an "interested party"?

Rule 4(c)(2).

(2) Service may be effected by any person who is not a party ....

Rule 4(c)(2).

Systemic confusion.

Since USOA isn't even the proper *eo nomine* party, the actual real parties in interest remain unknown. However, here's the first train wreck. If the irs is not an "interested party" in *federal* court, its comm'r is not an "interested party" in *tax* court. Thus, where the comm'r purports to be a real party in interest for purposes of *tax* court cases, how is the irs, via its agents, anything but a real party in interest in *federal* court cases?

Of course, where comm'r is ***not*** a real party in interest in *tax* court, it follows that irs agents ***may*** serve *federal* court "tax case" paperwork.

Estoppel via actions.

Here's the second train wreck. Where DOJ wants, *post*-judgment, to have the trial court authorize the ***irs*** to sell the home, it follows that the ***irs*** is just as interested from the outset. Where the irs *act* like a party, how do they avoid the Rule 4(c)(2) restriction? *Brant*, 93 U.S. at 335-36 (equitable estoppel).

b. Was proper Notice served within 120 days?

Rule 4(m).

There was only the one effort at delivery of summons and complaint. Rule 4(m) requires that service be completed within 120 days after the suit is filed. Thus, the deadline for service of the suit filed 11 September was 9 January.

c. Have all indispensable parties been served?

Notice to all interested parties.

How does ***any*** suit in equity proceed without proper notice to all interested/affected parties? *Teamsters*, 494 U.S. at 584, 586 (a trustee has no principal). *Cf. Martin* (non-parties to an agreement (consent decree) are not bound by it); Rules 19(a), (b).

Cf. Pacific Live Stock Co., 241 U.S. at 449 (equitable determination of water rights required presence of all interested parties); *Colorado River* (all parties to water rights management program were properly before the *state* court); *California v. Arizona* (1979) (S. Ct. have jurisdiction over indispensable parties despite statute suggesting otherwise).

Thus, USOA's suit is facially defective from the outset. *See Provident Bank* (Rule 19, indispensable parties). *Cf. Nevada*, 463 U.S. at 118 n.6 (pleading amended to include indispensable parties). Not only must service be accomplished by a non-party, Rule 4(c)(2), but also all parties with an interest in the property have to be served. *Martin*. So, even if an irs agent ***is*** somehow eligible to serve process in a "tax" case, Plaintiff never even named, much less served, several indispensable parties.

Even more challenging still, how *does* one property serve, simultaneously, as two separate *res*'s? Collateral? Ok. But *res*'s??! The schemers have out-schemed themselves!

d. Did SMELTZER ever prove his agency?

The relevant agency theories.

ACTUAL AUTHORITY AND APPARENT AUTHORITY.

Agency cannot be presumed; the purported agent carries the burden to prove his agency. *See Schultz*, 956 S.W.2d at 760; *Zuniga* (citing *Bernsen*, 52 S.W.3d at 309); *Alamo Cmty. Coll. Dist.* (citing *S. County Mut. Ins. Co.*, 750 S.W.2d at 172)); *Disney Enters., Inc.*, 981 S.W.2d at 30; *Gray* (agency is not presumed; wife cannot be presumed to be husband's agent).

"[O]nly an alleged principal's words or conduct that are represented to the third party can clothe an alleged agent with apparent authority. [*BML Stage Lighting, Inc.*, 14 S.W.3d at 401]." *Coleman*, 180 S.W.3d at 588. In short, the alleged agent's word, alone, never proves agency.

Braquet has challenged SMELTZER's agency authority from the outset. Over his objection, agency has been presumed into existence, thereby shifting the burden. *See* Question 6. Thus, Braquet challenges the concept that where there is no specific finding of fact, the presumption favors the implied finding, thereby turning the matter into a sufficiency of evidence matter when on review. *Cf. Coleman*. The implied finding here favors agency, which is an issue of fact, which finding is made without any evidence, summary judgment procedures, hearing, trial, etc., much less without any burden on

SMELTZER. Thus, while it may *also* be a *sufficiency* point, first it is a *shifting of the burden* point.

SMELTZER HAS NO ACTUAL AUTHORITY.

Actual authority arises where the principal authorizes the agent. *See Cameron County Sav. Ass'n*, 819 S.W.2d at 603. What SMELTZER has to establish is the ***entire*** chain of agency, from (A) USOA, the purported principal, to (B) the minutes in the authorized book authorizing that first agent or employee, to (C) how DOJ gets involved in the matter, at all, to (D) how SMELTZER gets involved in the matter at all.

Even the statutes require evidence under § 7401, which evidence Braquet has demanded from the outset and yet, to this very day, nowhere appears of Record. So, as a matter of law, USOA having presented no evidence even under § 7401, there is no actual authority for this suit, meaning that SMELTZER has no Rule 11 signature authority, as Braquet has objected to from the outset.

SMELTZER HAS NO APPARENT AUTHORITY.

USOA has said absolutely nothing to Braquet about anything about any agency in DOJ, or in anyone or anything else, as far as that goes. And, again, the Record is absolutely silent when it comes to evidence regarding such communications. DOJ, in particular SMELTZER, has the burden to prove agency, since DOJ/SMELTZER is the party asserting agency. *See Schulz*, etc., *supra*. Again, the burden has been shifted where agency is presumed rather than compelled proved. *Cf. Coleman*.

SMELTZER has no Rule 11 signature authority.

Bottom line, as objected to from the very

beginning, SMELTZER has no Rule 11 authority.

There is no Original Complaint.

Since SMELTZER has no Rule 11 authority, there is no original complaint; hence, no Notice (or subject matter jurisdiction), as a matter of law.

No subject matter jurisdiction

3. Where's any evidence of any "injury in fact"?

On the claim, generally.

Lujan.

Rules 9(a) and 17(b). § 3002(15)(A); § 321(d). *Cf. Arnold* (applying *Booker*, at trial, a year and a half **before** *Booker* existed, and *Blakely*, a year **before** it existed; non-agreement vitiates "evidence" used for "sentencing"); *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery); RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS); *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

Where's evidence of signature authority?

Rule 11. What/who is USOA, and how does DOJ have authority to sign for it, unless it's a foreign commercial entity? Since it's not a registered foreign or domestic commercial entity in "Texas", where is its capacity to show up in court as a plaintiff at all, even *with* signature authority?

Where's the real party in interest?
Rules 9(a) and 17(b). § 3002(15)(A); § 321(d). *Cf. Arnold* (non-agreement vitiates "evidence" used for "sentencing"); *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery); RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS); *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

Where's even the *eo nomine* party?
Rule 17(a).

4. Doesn't a complaint for this type case have to be sworn?

Rule B suggests what Rule C overtly requires. Per Rule B, even prior to DOJ's injecting the *England* issue in this case, DOJ had to submit a verified complaint. Per Rule C, once DOJ converted this into a § 7201 (*payment*) collections case, the need for a verified complaint was set in concrete.

Manifest violations of Due Process

5. Where was Braquet given a meaningful opportunity to be heard?

"Sentence first—then verdict! [*then* trial!]"
No trial; no summary judgment; not even a

hearing, of any type, kind, or nature. *Harris*, 55 U.S. at 339 (voidness); *Boddie* (denial of access).

Milliken; *Peralta*; *Hamdi*; *International Shoe*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie* (denial of access); *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

6. Do irrebuttable presumptions still violate Due Process?

No opportunity to be heard.

Where there is no Notice and/or no opportunity to be heard, all evidentiary burdens are satisfied by nothing except irrebuttable presumptions. This is a rather ancient type of Due Process violation. *Elkins*; *Salfi* (in particular part III, which distinguishes *Salfi*); *LaFleur*; *Vlandis*; *Stanley*.

USOA never had to satisfy its burden.

Where USOA is relieved of its burden, the burden has been shifted. *Cf. Clark* (mens rea and burden in context of insanity defense) (citing *Mullaney* (burden to prove mens rea on STATE not defendant), *In re Winship* (beyond a reasonable doubt standard is shifted when lessened to preponderance), *Sandstrom*, 442 U.S. at 524 (presumption of mens rea violates Due Process), *Cool*, 409 U.S. at 103 (where defendant has to prove anything beyond a reasonable doubt, the burden has been shifted), and *Martin v. Ohio*, 480 U.S. at 233-34 (self-defense evidence not limited to defendant's case-in-chief)).

NOT AT THE THRESHOLD.

See Question 3.

NOT FOR SUMMARY JUDGMENT.

Beard (citing *Anderson*, 477 U.S. at 255); *Scott* (citing *Diebold*, 369 U.S. at 655).

AND NOT FOR TRIAL.

Mullaney (citing *In re Winship*); *Heiner*.

Braquet's defenses presumed away.

Presume a need to prove up affirmative defenses. *Dixon*. Where's the written agreement? TEX. PROP. CODE § 112.004. Where's the "money trail" satisfying the "know your customer" element self-imposed via The Patriot Act? *Cf. Fior D'Italia*, 536 U.S. at 252, 256 n.4 (burden of production – who has access?).

7. Does denial of discovery still constitute denial of access?

Ins. Corp. v. Compagnie des Bauxites; *Hammond Packing Co.*, 212 U.S. at 350-51; *Roadway Express, Inc.* (citing *National Hockey League* (citing *Societe Internationale*, 357 U.S. at 212-13)).

Capacity

8. How is the "14th Amendment" satisfied, here?

Judicial Notice.

No Evidence

9. Where's proof that this suit was even authorized?

In the face of Braquet's objection(s), USOA/DOJ never even satisfied § 7401. *See* Question 2.d.

10. Where's any evidence supporting any part of the judgment?

The only *evidence* of Record is that submitted by Braquet. *O'Connor* (uncontroverted Affidavit accepted as true). Thus, there is no evidence of Record any where near ***supporting*** this "judgment".

Bank of the United States (evidence ultimately determined sufficient, but due diligence is required of claimant asserting claim against endorser, not maker, as to place of presentment); *Roselius* (evidence of perfect land title insufficient to support federal jurisdiction); *Jones Nat'l Bank* (is there substantial evidence to support the charge?); *Sinclair*, 279 U.S. at 761 (no material evidence to support charge); *Alexander* (no evidence supporting two of the claims); *Swift & Co.* (insufficiency of statute and indictment were not issues directly appealable to Supreme Court); *Bozza* (of the five counts, four were based on insufficient evidence); *Pittsburgh Steamship Co.* (federal appellate court's "finding" of trial examiner's bias was not supported by the Record); *Thompson*, 362 U.S. at 207 nn.12, 13 ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner* (Record so devoid of evidence as to render conviction

a violation of Due Process); *Barr* (peaceful "sit-in" is not evidence of breach of peace); *Johnson*, 391 U.S. at 598 (no evidence supporting an element of the charge); *Vachon*, 414 U.S. at 480 ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process."); *Burks* (reversal based on insufficiency of evidence activates Double Jeopardy); *Haley* ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

11. Where's the verified assessment?

DOJ invades *England*!

Since there are, theoretically, criminal charges that may arise from time to time in "income tax" cases, it's not really a violation of the debt collection practices act for DOJ to haul off and charge someone criminally in the "income tax" setting. However, that ***does*** change the collections case, rather drastically. It transforms the case from a § 7401 case to a § 7201 case. Moreover, since it's not just "evasion" that DOJ so boldly charges, but "evasion" of "***payment***", DOJ instantly obligates itself under *England* to produce and prove up a verified assessment.

So, where is it?! Where's the verified assessment?

Void Judgments

12. Isn't this void judgment properly vacated?

Void judgments.

Harris, 55 U.S. at 339. *See also Cotton Mills*, 237 U.S. at 196-97. *Cf.* "[A] judgment will never be considered final if the court lacked subject-matter jurisdiction." *Dubai Petroleum Co.*, 12 S.W.3d at 76. A void judgment may be challenged collaterally. *Cf. Schlesinger* (same principles apply in court-martial setting); *Klapprot* (citizenship can't be revoked until activity giving rise to that consequence has been proved).

There's no personal jurisdiction, subject matter jurisdiction, or evidence, and there are significant Due Process problems.

13. Isn't this case properly dismissed?

Dismissal is certainly fitting and appropriate.

DOJ documented no response to Braquet's motions except that of charging him criminally. So, while some of DOJ's problems could be fixed, some of them can't, and hauling off and charging Braquet criminally from his demanding proof of the claim against him renders dismissal a good start.

Pegram (ERISA context, capacity issue); *Anza* (RICO context, causation issue). *Cf. Eberhart* (FED. RS. CRIM. P. 33, 37); *J. H. Munson Co.*; *McNutt*; *Tidal Oil Co.*; *Chase*.

Remedies and Relief Requested

Given the foregoing, Braquet requests

1. That this Court grant this petition, issue the writ of certiorari, and take jurisdiction of this matter;
2. That this Court overrule the published *Stearman* case, thereby relieving the *trial* courts who know better from having to go through this any more;
3. That this Court grant the motion for stay, and, ultimately, vacate the trial court's "final judgment" as void, vacate the "order for sale of realty" as void, vacate the eviction order as void, and either dismiss or instruct the trial court to consider dismissal;
4. The opportunity to brief any additional issues the Court may identify;
5. The non-argument calendar;
6. Costs; and
7. Any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
I reserve all my rights

c/o 11630 Sagecanyon Drive
Houston, TX 77089

Appendix A
Table of Contents

Rule 14.1(i)(i)—Appellate Opinion(s) A-1

For this appeal, none yet. A-1

Rule 14.1(i)(ii)—Additional Orders A-1

In general, *see* No. 07-1419, App. A A-1

2007 Dec 5 — Trial Court [19], Final Judgment A-1

2007 Sep 12—Trial Court [3], unsigned, undated order setting Rule 16 settlement conference A-2

2007 Dec 3—Trial Court [17], Minute Entry following Rule 16 settlement conference A-3

2007 Dec 13—Trial Court [23], Denial of motions to vacate and for stay A-4

2008 Jan 7—Trial Court [31], Denial of motions for stay (construed from responses) A-4

2008 Jan 8—Trial Court [32], Denial of motion for new trial A-5

2008 Jan 17—Trial Court [35], Denial of motion to dismiss, Rule 4(m) A-5

2008 Feb 15—Trial Court [44]. A-5

2008 Apr 14—Trial Court [54], Order for Sale of Realty A-6

2008 May 23—Trial Court [59], Denial of motion to stay sale A-10

2008 Jun 24—Trial Court [64], Rule 60(b) motion denied A-11

2008 July 17—Trial Court [72], Denial of motion to stay A-12

2008 August 5—Trial Court [76], Eviction A-13

Rule 14.1(i)(iii)—Rehearing, or other extension ..A-14

None A-14

Rule 14.1(i)(iv)—Judgment of different date..... A-14

None A-14

Rule 14.1(i)(v)—Statutes and Rules A-14

FED. R. CIV. P. 4(c)(2). *See* Question 2.a..... A-14

Rule 14.1(i)(vi)—Additional Essential Materials .A-14

Reference to the Record will suffice..... A-14

Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

For this appeal, none yet.

Case No. 08-20471. This covers the Rule 60(b) matters, in particular.

Rule 14.1(i)(ii)—Additional Orders

In general, *see* No. 07-1419, App. A.

2007 Dec 5 — Trial Court [19], Final Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Judgment of Title and Possession

1. Louto J. Braquet, Jr., is indebted to the government in federal income taxes, penalties, and interest of $98,689.56.

2. The government's federal-tax lien is foreclosed, and it has title and possession of real property at 11630 Sagecanyon Drive, Houston, Texas. The Sagecanyon property is Lot Twelve, Block Sixteen of Sageglen, Section Two, a Subdivision in Harris County, Texas, according to the Map recorded in Volume 246, Page 34, of the Map Records of Harris County, Texas.

3. Braquet must vacate the Sagecanyon property by January 9, 2008.

Signed on December 5, 2007, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2007 Sep 12—Trial Court [3], unsigned, undated order setting Rule 16 settlement conference

See No. 07-1419, App. A. ("2007 Sep 27 (?)").

2007 Dec 3—Trial Court [17], Minute Entry following Rule 16 settlement conference

Civil Courtroom Minutes

JUDGE	Lynn N. Hughes
CASE MANAGER	Dawna Kelly
LAW CLERK	☐ Glotfelty ☑ Shivangi ☐ _
DATE	*12 / 3 / 2007*
TIME	*11:25* a.m. — *11:50* a.m.; ☐ p.m. — ☐ p.m.
CIVIL ACTION	H — *07* — *2926*
STYLE	*U.S.A.* *versus* *Louto Braquet, et al.*

DOCKET ENTRY

☑ Conference; ☐ Hearing; _____ day ☐ Bench;
☐ Jury trial (Rptr: *K. Metzger*)

Joshua Smeltzer for ☑ Ptf. # *1* ☐ Deft. # __

Louto Braquet (pro se) for ☐ Ptf. # __ ☑ Deft. # *1*

_____ for ☐ Ptf. # ___ ☐ Deft. # ___

_____ for ☐ Ptf. # ___ ☐ Deft. # ___

☐ All motions not expressly decided are denied without prejudice.

☐ Evidence taken [exhibits or testimony].

☐ Argument heard on: ☐ all pending motions; ☐ these topics

_____

☐ Motions taken under advisement: _____

☐ Order to be entered.

☐ Miscellaneous review set: _____

☑ Rulings orally rendered on: *On January 9, 2008, the government has the right to possess Louto Braquet's property in payment of this taxes.*

_____

USCA5 153

2007 Dec 13—Trial Court [23], Denial of motions to vacate and for stay

See No. 07-1419, App. A.

2008 Jan 7—Trial Court [31], Denial of motions for stay (construed from responses)

See No. 07-1419, App. A.

2008 Jan 8—Trial Court [32], Denial of motion for new trial

See No. 07-1419, App. A.

2008 Jan 17—Trial Court [35], Denial of motion to dismiss, Rule 4(m)

See No. 07-1419, App. A.

2008 Feb 15—Trial Court [44].

See USCA5 375.

2008 Apr 14—Trial Court [54], Order for Sale of Realty

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America, Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr., *et al.*, Defendants.	§	

Order for Sale of Realty

1. The court orders the sale of the land and improvements known as 11630 Sagecanyon Drive, Houston, Texas 77089, being:

   Lot Twelve in Block Sixteen of Sageglen, Section Two, a subdivision in Harris County, Texas, according to the map in Volume 246, Page 34, of the Map Records of Harris County, Texas.

2. The Internal Revenue Service of the United States Treasury will sell the property free of all claims and without redemptive rights at public auction on the first Tuesday of a month at 11:00 a.m., at the area designated in the Harris County Family Law Center by Commissioner's Court Order dated March 18, 2003, Clerk's File W516820.

3. The Service must publish the notice in the margin in the Pasadena *Citizen* and the Houston *Daily Court Review* once each week for the third and fourth weeks before the sale. It must also post the notice on the court house door twenty-one days before the sale.

4. The Service must deliver a copy of the notice by certified mail to:

   Louto Braquet, Jr.
   11630 Sagecanyon Drive
   Houston, Texas 77089 [1]

   R. Dwayne Danner
   Countrywide Home Loans of Texas
   7105 Corporate Drive, PTX-B-455
   Plano, Texas 75024

282406.1

[⊥ 2]

5. At the time of the sale, the highest bidder must deposit 10% of the bid in cash or cashier's check, with the Service and pay the balance of the bid to the Service, cash or cashier's check, within seven business days of his or her bid being accepted.

6. If the bid is not paid, the deposit will be applied to the costs of sale and the respondent's tax liability, and the property will be auctioned again.

---

[1] N.B. The eviction order renders this impossible! *LJB*.

7. Objections to the sale must be filed with the court within ten days of the auction.

8. After objections are heard, the Service will issue the buyer a deed – not a quit claim – conveying the respondent's full title to the buyer and warranting against claims under the Service.

9. The sale proceeds will be distributed:

   A. First, to the Service for the cost of the sale; then
   B. Harris County for any ad valorem taxes or court costs; then
   C. Countrywide Home Loans of Texas for its mortgage; then
   D. The Service's federal tax lien against Louto J. Braquet, Jr.,; and
   E. The balance to Louto J. Braquet, Jr.

Signed April *14*, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

282406.1

[⊥ 3]

Auction of 11630 Sagecanyon

The United States Internal Revenue Service will sell 11630 Sagecanyon Drive, Houston 77089, free of all claims at public auction on _____, 2008, at 11:00 a.m., Harris County Court House.

The sale will be to the highest bidder, and the highest bidder must deposit with the Service at the time of the sale 10% of the bid in cash or cashier's check and must pay the balance within seven business days of his bid's being accepted.

The property may be inspected by calling _____ at (_____) _____ - _____.

Internal Revenue Service
By: _____

282406.1

2008 May 23—Trial Court [59], Denial of motion to stay sale

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order Denying Stay

Louto Braquet's motion to stay the sale (54) is denied. (57)

Signed on May 23, 2008, at Houston, Texas.

/s/ *Lynn N. Hughes*
Lynn N. Hughes
United States District Judge

2008 Jun 24—Trial Court [64], Rule 60(b) motion denied

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order Denying Relief From Judgment

Louto Braquet's motion for relief from judgment (63) is denied.

Signed on June 24, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2008 July 17—Trial Court [72], Denial of motion to stay

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America, Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr., *et al.*,	§	
Defendants.	§	

Order Denying Stay

Louto Braquet's motion to stay the execution of judgment is denied. (68)

Signed on July 17, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2008 August 4—Trial Court [76], Eviction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order to Enforce Judgment and Evict

1. By September 5, 2008, Louto J. Braquet, Jr., or anyone who is residing at 11630 Sagecanyon Drive, Houston, Texas, must vacate it. Otherwise, the United States Marshal may use force to evict the residents. (75)
2. Anyone who does not vacate or re-enters the property, will be held in contempt of this court.
3. By August 15, 2008, the government must serve this order on anyone residing at the property and by posting it on the front door.

Signed on August 4, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

FED. R. CIV. P. 4(c)(2). *See* Question 2.a.

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice